

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1457

Introduced by Senator Cogdill

February 19, 2010

~~An act to amend Section 11120 of the Government Code, relating to open meetings.~~ *An act to add Section 14661.2 to the Government Code, relating to public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1457, as amended, Cogdill. ~~Bagley-Keene Open Meeting Act.~~ *State facilities: alternative project delivery methods.*

Existing law establishes procedures governing design-bid-build methods of procurement, but permits the Director of General Services, when authorized by the Legislature, to use the design-build procurement process for state office facilities, other buildings, structures, and related facilities. Existing law further requires the director, prior to contracting for the procurement of state office facilities and other state buildings and structures, to prepare a program setting forth the scope of the project and to establish a competitive prequalification process, as provided.

This bill would authorize the Director of General Services to undertake public works of improvement by using other alternative methods of procurement, as prescribed. The bill would authorize the director, whenever a public works appropriation is made for acquisition, preliminary plans, working drawings, or the construction phase of a project, to determine the most appropriate delivery method for that project. The bill would require the department to follow specified criteria for those contracts and would set forth the applicable labor

and contracting standards, including payment procedures, delivery methods, and remedies in case of default.

~~Existing law creates the Bagley-Keene Open Meeting Act, which requires that all meetings of a state body be open and public and that all persons be permitted to attend any meeting of a state body, with specified exceptions. Existing law makes a declaration of public policy in this regard.~~

~~This bill would make a technical, nonsubstantive change in the declaration of public policy described above.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) It is in the best interest of the State of California to construct*
4 *state offices and other necessary program facilities in a*
5 *cost-efficient manner that represents the best overall value to the*
6 *taxpayers and has the greatest benefit to our state's economy.*

7 *(b) Alternative project delivery methods can be an attractive*
8 *option to departments in comparison to the existing three-step*
9 *(design-bid-build) process.*

10 *(c) The State of California should be able to utilize cost-effective*
11 *options for the delivery of public works projects, in accordance*
12 *with the national trend, which include authorizations in California*
13 *to allow public entities to utilize alternative delivery methods.*

14 *SEC. 2. Section 14661.2 is added to the Government Code, to*
15 *read:*

16 *14661.2. (a) Notwithstanding any other law, the Department*
17 *of General Services may undertake public works of improvement*
18 *by using any of the methods set forth in this section. The*
19 *availability of these alternative methods shall not preclude the use*
20 *of other methods of project delivery.*

21 *(b) For purposes of this section, the following definitions apply:*

22 *(1) "Construction manager at risk contract" means a*
23 *competitively bid contract by a department with an individual,*
24 *partnership, joint venture, corporation, or other recognized legal*
25 *entity, which is appropriately licensed in this state and which*
26 *guarantees the cost of a project and furnishes construction*

1 *management services, including, but not limited to, preparation*
2 *and coordination of bid packages, scheduling, cost control, value*
3 *engineering, evaluation, preconstruction services, and construction*
4 *administration.*

5 (2) *“Department” means the Department of General Services*
6 *as to any project under the jurisdiction of that department, or its*
7 *successor department or agency.*

8 (3) *“Director” means the Director of General Services.*

9 (4) *“Job order contract” means a competitively bid, fixed*
10 *priced, indefinite quantity procurement contract issued by a*
11 *department to a job order contractor for a definite project or work,*
12 *as compiled from a catalog of construction tasks to be performed*
13 *pursuant to a job order contract. Each job order under a job order*
14 *contract shall not exceed the total cost limit established by the*
15 *Director of Finance pursuant to subdivision (b) of Section 10105*
16 *of the Public Contract Code.*

17 (c) *Whenever an appropriation for a public works project is*
18 *made for acquisition, preliminary plans, working drawings, or the*
19 *construction phase, the director shall determine the most*
20 *appropriate delivery method for that project. The director shall*
21 *consider the following criteria:*

22 (1) *The nature of the project.*

23 (2) *The project delivery schedules.*

24 (3) *Overall project cost, including life cycle costs during the*
25 *operational phase following construction.*

26 (4) *The ability to achieve design, construction, or operational*
27 *features not achievable through the design-bid-build method.*

28 (5) *Shifting owner risk from the department to the design or*
29 *contracting entities.*

30 (6) *Minimizing change orders.*

31 (7) *Other criteria determined by the director to be critical to*
32 *the project based on specific facility program.*

33 (d) *Contracts entered into using alternative delivery methods*
34 *pursuant to this section are subject to all of the following:*

35 (1) *Any entity entering into such a contract shall not be exempt*
36 *from the provisions of the Labor Code.*

37 (2) *Public notice of a project shall be provided in accordance*
38 *with Sections 10140 and 10141 of the Public Contract Code.*

39 (3) *The contract shall provide for the filing of separate*
40 *performance and payment bonds by the contractor in accordance*

1 with Sections 3247, 3248, 3249, 3250, 3251, and 3252 of the Civil
2 Code, and Sections 7103 and 7200 of the Public Contract Code.

3 (4) Each bond shall be in a sum as provided in Section 3248 of
4 the Civil Code.

5 (5) The payment bond shall secure the payment of the claims
6 of laborers, mechanics, or material men employed on the work
7 under the contract and shall contain all other provisions required
8 by law.

9 (6) Any payment or performance bond written for the purpose
10 of alternative delivery methods shall be written using a bond form
11 developed by the department pursuant to subdivision (g) of Section
12 14661.1 of the Government Code. The purpose of this subdivision
13 is to promote uniformity of bond forms to be used for alternative
14 delivery system projects throughout the state. The performance
15 bond shall guarantee the faithful performance of the contract by
16 the contractor. In lieu of payment and performance bonds the
17 director may elect to purchase separate insurance to cover the
18 performance of the contractor.

19 (7) No payment shall be made upon the contract to the
20 contractor or any assignee of the contractor until any order by
21 the director that a sufficient surety be substituted on the bond or
22 that a new, additional, or supplemental bond be given, is satisfied.
23 No cancellation of or withdrawal of a surety from a bond is
24 effective unless approved by the director.

25 (8) The contract shall contain a provision regarding the time
26 when the whole or any specified portion of the work contemplated
27 shall be completed, and shall provide that for each day completion
28 is delayed beyond the specified time, the contractor shall forfeit
29 and pay to the state a specified sum of money to be deducted from
30 any payments due or to become due to the contractor. The sum so
31 specified is valid as liquidated damages, unless manifestly
32 unreasonable under the circumstances existing at the time the
33 contract was made. Any contract pursuant to this section may also
34 provide for the payment of extra compensation to the contractor
35 as a bonus for completion prior to the specified time. The provision
36 for extra compensation, if used, shall be included in the
37 specifications, which shall clearly set forth the basis for the
38 payment. Inclusion of a bonus for early completion clause shall
39 not be used as a reason for augmentation of the public work
40 appropriation.

1 (9) *Contract payments shall be made as prescribed in Sections*
2 *10261 and 10261.5 of the Public Contract Code.*

3 (10) *Any contractor or subcontractor shall pay his or her*
4 *subcontractors in accordance with Sections 10262 and 10262.5*
5 *of the Public Contract Code.*

6 (11) (A) *If the director determines that a contractor has failed*
7 *to supply an adequate workforce or material of proper quality, or*
8 *has failed to comply with Section 10262 of the Public Contract*
9 *Code, or has failed in any other respect to complete the work with*
10 *the diligence and force specified by the contract, the director may*
11 *do either of the following:*

12 (i) *After written notice of at least five days to the contractor*
13 *specifying the defaults to be remedied, provide any necessary labor*
14 *or materials and deduct the cost from any money due or to become*
15 *due to the contractor under the contract.*

16 (ii) *If the director considers that the failure is sufficient ground*
17 *for termination, the director may give written notice of at least*
18 *five days to the contractor and the contractor's sureties, that if the*
19 *defaults are not remedied, the contractor's control over the work*
20 *shall be terminated.*

21 (B) *If the defaults are not remedied within the time specified in*
22 *the notice, the contractor's control shall terminate as of the*
23 *expiration of that time.*

24 (12) *A contract entered into pursuant to this section shall comply*
25 *with Section 10263 of the Public Contract Code with respect to*
26 *the substitution of securities for any moneys withheld by a public*
27 *agency to ensure performance under a contract.*

28 (e) *Before entering into a contract for a project pursuant to this*
29 *section, the director shall make arrangements for preparation of*
30 *the following:*

31 (1) *Complete plans and specifications setting forth the directions*
32 *needed to enable a competent mechanic or other builder to*
33 *implement them.*

34 (2) *The necessary documents for the solicitation of bids for the*
35 *construction manager at risk contract method, including*
36 *prequalification standards, schematic plans, and outline*
37 *specifications indicating the general scope of the project and the*
38 *designation of fees and other fixed costs upon which prequalified*
39 *contractors shall be invited to submit competitive bids, which shall*
40 *serve as the basis for selection.*

1 (3) *The necessary documents for the solicitation of bids for the*
2 *job order contract method, including prequalification standards,*
3 *schematic plans, and outline specifications indicating the general*
4 *scope of the project and the designation of fees and other fixed*
5 *costs upon which prequalified contractors shall be invited to submit*
6 *bids, which shall serve as the basis for selection.*

7 (f) *Notwithstanding any provision of the Public Contract Code,*
8 *Chapter 3 (commencing with Section 15815) of Part 10b of*
9 *Division 3 of this code, or any other law, the department shall*
10 *establish policies and procedures to implement this section.*

11 ~~SECTION 1. Section 11120 of the Government Code is~~
12 ~~amended to read:~~

13 ~~11120. It is the public policy of this state that public agencies~~
14 ~~exist to aid in the conduct of the people's business and that the~~
15 ~~proceedings of public agencies be conducted openly so that the~~
16 ~~public may remain informed.~~

17 ~~In enacting this article the Legislature finds and declares that it~~
18 ~~is the intent of the law that actions of state agencies be taken openly~~
19 ~~and that their deliberation be conducted openly.~~

20 ~~The people of this state do not yield their sovereignty to the~~
21 ~~agencies which serve them. The people, in delegating authority,~~
22 ~~do not give their public servants the right to decide what is good~~
23 ~~for the people to know and what is not good for them to know.~~
24 ~~The people insist on remaining informed so that they may retain~~
25 ~~control over the instruments they have created.~~

26 ~~This article shall be known and may be cited as the Bagley-Keene~~
27 ~~Open Meeting Act.~~